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IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

THE UNITED STATES OF AMERICA  
V.

KEVIN STERN

Case Number: 21-0021 MCE

**STIPULATION AND ORDER**

**DATE: March 18, 2021**  
**TIME: 10 a.m.**  
**DEPT: MCE**

This case is set for a status conference on March 18, 2021. By this stipulation, the parties request a continuance of the status conference to May 20, 2021, and to exclude time under Local Codes T2 and T4, for the reasons set forth below.

On May 13, 2020, this Court issued General Order 618, which suspends all jury trials in the Eastern District of California “until further notice.” Further, pursuant to General Order 611, this Court’s declaration of judicial emergency under 18 U.S.C. § 3174, and the Ninth Circuit Judicial Council’s Order of April 16, 2020 continuing this Court’s judicial emergency, this Court has allowed district judges to continue all criminal matters to a date after May 2, 2021

1 Although the General Orders and declarations of emergency address the district-wide  
2 health concern, the Supreme Court has emphasized that the Speedy Trial Act’s end-of-justice  
3 provision “counteract[s] substantive openendedness with procedural strictness,” “demand[ing]  
4 on-the-record findings” in a particular case. (*Zedner v. United States*, 547 U.S. 489, 509 (2006)).  
5 “[W]ithout on-therecord findings, there can be no exclusion under” § 3161(h)(7)(A). (*Id.* at 507).  
6 Moreover, any such failure cannot be harmless. (*Id.* at 509); see also *United States v. Ramirez-*  
7 *Cortez*, 213 F.3d 1149, 1153 (9th Cir. 2000) (explaining that a judge ordering an ends-of-justice  
8 continuance must set forth explicit findings on the record “either orally or in writing”).

9 Based on the plain text of the Speedy Trial Act—which *Zedner* emphasizes as both  
10 mandatory and inexcusable—General Orders 611, 612, 617, and 618 and the subsequent  
11 declaration of judicial emergency require specific supplementation. Ends-of-justice continuances  
12 are excludable only if “the judge granted such continuance on the basis of his findings that the  
13 ends of justice served by taking such action outweigh the best interest of the public and the  
14 defendant in a speedy trial.” 18 U.S.C. § 3161(h)(7)(A). Moreover, no such period is excludable  
15 unless “the court sets forth, in the record of the case, either orally or in writing, its reason or  
16 finding that the ends of justice served by the granting of such continuance outweigh the best  
17 interests of the public and the defendant in a speedy trial.” (*Id.*).

18 The General Orders and declaration of judicial emergency exclude delay in the “ends of  
19 justice.” 18 U.S.C. § 3161(h)(7) (Local Code T4). Although the Speedy Trial Act does not  
20 directly address continuances stemming from pandemics, natural disasters, or other emergencies,  
21 this Court has discretion to order a continuance in such circumstances. For example, the Ninth  
22 Circuit affirmed a two week ends-of-justice continuance following Mt. St. Helens’ eruption.  
23 *Furlow v. United States*, 644 F.2d 764 (9th Cir. 1981). The court recognized that the eruption  
24 made it impossible for the trial to proceed. *Id.* at 767-68; see also *United States v. Correa*, 182 F.  
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1 Supp. 326, 329 (S.D.N.Y. 2001) (citing *Furlow* to exclude time following the September 11,  
2 2001 terrorist attacks and the resultant public emergency). The coronavirus is posing a similar,  
3 albeit more enduring, barrier to the prompt proceedings mandated by the statutory rules.

4 In light of the societal context created by the foregoing, this Court should consider the  
5 following case-specific facts in finding excludable delay appropriate in this particular case under  
6 the ends-of-justice exception, § 3161(h)(7) (Local Code T4).

7 **STIPULATION**

8 Plaintiff United States of America, by and through its counsel of record, and defendant,  
9 by and through defendant's counsel of record, hereby stipulate as follows:

10 1. This matter was set for status on March 18, 2021.

11 2. By this stipulation, defendants now move to continue the status conference until **May**  
12 **20, 2021, at 10:00 a.m.**, and to exclude time between March 18, 2021, and May 20, 2021, under  
13 Local Code T4.

14 3. The parties agree and stipulate, and request that the Court find the following:

15 a) The government has represented that the discovery associated with this case to date  
16 includes more many pages of investigative reports, photographs, affidavits, and other documents;  
17 approximately, recorded phone calls intercepted pursuant to the Title III wiretap; and other video  
18 and audio recordings. All of this discovery is in the process of being produced directly to counsel  
19 and/or made available for inspection and copying.

20 b) Counsel for defendant needs additional time to review the discovery in this case, to  
21 conduct independent factual investigation, to research trial and sentencing issues, to consult with  
22 the client, and to otherwise prepare.  
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1 c) Counsel for defendants believe that failure to grant the above-requested continuance  
2 would deny them the reasonable time necessary for effective preparation, taking into account the  
3 exercise of due diligence.

4 d) The government does not object to the continuance.

5 e) Based on the above-stated findings, the ends of justice served by continuing the case as  
6 requested outweigh the interest of the public and the defendant in a trial within the original date  
7 prescribed by the Speedy Trial Act.

8 f) For the purpose of computing time under the Speedy Trial Act, 18 U.S.C. § 3161, et  
9 seq., within which trial must commence, the time period of March 18, 2021 to May 20, 2021,  
10 inclusive, is deemed excludable pursuant to 18 U.S.C. § 3161(h)(7)(A), B(iv) [Local Code T4]  
11 because it results from a continuance granted by the Court at defendant's request on the basis of  
12 the Court's finding that the ends of justice served by taking such action outweigh the best interest  
13 of the public and the defendant in a speedy trial.

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1 4. Nothing in this stipulation and order shall preclude a finding that other provisions of  
2 the Speedy Trial Act dictate that additional time periods are excludable from the period within  
3 which a trial must commence.  
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5 IT IS SO STIPULATED.

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7 Dated: March 10, 2021

MCGREGOR W. SCOTT  
United States Attorney  
/s/ Vincenza Rabenn  
VINCENZA RABENN  
Assistant U S Attorney


10 Dated: March 10, 2021

/s/ Olaf W. Hedberg  
Olaf W. Hedberg  
Counsel for Defendant  
KEVIN STERN

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15 **ORDER**

16 **IT IS SO ORDERED.**

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18 Dated: March 11, 2021

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20 MORRISON C. ENGLAND, JR.  
21 SENIOR UNITED STATES DISTRICT JUDGE  
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